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Rules, Regulations, Orders

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

[Docket No. 3100]

IN THE MATTER OF WILLARD TABLET COMPANY, INC.

SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product.* Representing, in connection with offer, sale and distribution, in interstate commerce or in District of Columbia, of "Willard Tablets" and "Treatment", or other preparation or treatment of substantially same composition, that they constitute a competent and adequate remedy or cure for stomach and duodenal ulcers from excess acid condition; or that said preparation will do more than neutralize excess acid in the stomach and produce soothing effect on irritations therein caused thereby and temporarily relieve symptoms of distress due to such acid condition; or representing that said preparation and treatment will do more than provide relief from such symptoms of distress caused by such condition and by such ulcers, without also stating that any benefit obtained, other than such relief, will be variable, depending on individual's reaction to such preparation and such standardized treatment; or representing that they provide "definite relief", without qualification "from symptoms of distress" in equally conspicuous terms in direct connection therewith; or that they are "remarkable" or "marvelous"; or that such treatment is more dependable than any other treatment for correcting aforesaid ailments and conditions; prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Modified cease and desist order, Willard Tablet Company, Inc., Docket 3100, January 5, 1939]

SEC. 3.6 (d) .1) *Advertising falsely or misleadingly—Conditions of manufacture—In general.* Representing, in connection with offer, sale and distribution, in interstate commerce or in District of Columbia, of "Willard Tablets" and "Treatment", or other preparation or treatment of substantially same composition, that said preparation, "Willard Tablets", is compounded from an "unique" formula, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Modified cease and desist order, Willard Tablet Company, Inc., Docket 3100, January 5, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 5th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by John N. Wheelock, counsel for the Commission, and by John A. Nash, counsel for the respondent, and the Commission, on the 15th day of October, 1938, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, and having issued its order to cease and desist on the 15th day of October, 1938,[2] and the Commission having on the 5th day of January, 1939, modified its said findings of facts and conclusion, now modifies its said order to cease and desist so as to conform with its said modified findings of facts and conclusion, and being fully advised in the premises;

[1] 2 F. R. 1353 (1613 DI).
[2] 3 F. R. 2568 DI.

CONTENTS

RULES, REGULATIONS, ORDERS

NOTICES

FEDERAL REGISTER

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It is ordered, That the said order to cease and desist be, and the same hereby is, modified to read as follows:

It is ordered, That the respondent, Willard Tablet Company, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation designated as "Willard Tablets", and literature containing certain standardized dietary and hygienic advice referred to jointly with such preparation as the "Willard Treatment", or any other preparation or treatment of substantially the same composition and ingredients, sold under the above-mentioned names or any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

(a) That such preparation and treatment constitute a competent and adequate remedy or cure for stomach and duodenal ulcers which are due to or persist because of an excess acid condition;

(b) That such preparation will do more than neutralize excess acid in the stomach and produce a soothing effect on the irritations in the stomach caused thereby and temporarily relieve the symptoms of distress due to an excess acid condition;

(c) That such preparation when used with such treatment will do more than provide relief from the symptoms of distress caused by an excess acid condition and by stomach and duodenal ulcers, which are due to or persist because of excess acid, unless such representation also states that any benefit obtained other than such relief will be variable depending on the individual's reaction to such preparation and such standardized treatment;

(d) That such preparation and treatment will provide "definite relief", unless such statement is qualified by the phrase "from symptoms of distress" in equally conspicuous terms in direct connection with such representation;

(e) That such preparation and treatment are "remarkable" or "marvelous";

(f) That such preparation is compounded from an "unique" formula;

(g) That such treatment is more dependable than any other treatment for correcting the aforesaid ailments and conditions of the human body.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39–195; Filed, January 17, 1939; 9:13 a. m.]

[Docket No. 3267]

IN THE MATTER OF SUNBEAM LABORATORIES

SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product.* Representing, in connection with sale, etc., in interstate commerce or in the District of Columbia, of cosmetic preparation "Nailife", for use on finger nails, that said preparation is beneficial for dry or splitting nails; is the perfect nail food; is scientific preparation which will transform irregular, broken nails into well-formed, symmetrical ones; and will make nails strong and healthy; prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Sunbeam Laboratories, Docket 3267, January 5, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 5th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF LEOPOLD LEVOY AND NATHAN C. BLACHER, INDIVIDUALLY AND TRADING AS SUNBEAM LABORATORIES

ORDER TO CEASE AND DESIST

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That respondents, Leopold Levoy and Nathan C. Blacher, individually and trading as Sunbeam Laboratories, or trading under any other name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a cosmetic preparation for use on finger nails now known as "Nailife", whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparation is beneficial for dry or splitting nails.
2. Representing that said preparation is the perfect nail food.
3. Representing that "Nailife" is a scientific preparation which will transform irregular, broken nails into well-formed, symmetrical ones.
4. Representing that said preparation will make nails strong and healthy.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39–196; Filed, January 17, 1939; 9:13 a. m.]

[Docket No. 3433]

IN THE MATTER OF LA PERLA VINEYARD COMPANY ET AL.

SEC. 3.6 (a) 22) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Producer status of dealer—Distiller: Grower: Manufacturer:* SEC. 3.66 (g) *Misbranding or mislabeling—Producer status of dealer:* SEC. 3.96 (b) 5) *Using misleading name—Vendor—Producer or laboratory status of dealer.* Representing, in connection with offer, sale and distribution of wines, liquors and other alcoholic beverages, in interstate commerce or in District of Columbia, through use of word "distilling", or word "vineyard", or any other word or words of like import, in corporate or trade name, etc., that respondents, or any of them, are distillers; or manufacture the said wines or alcoholic beverages; or own, operate or control a vineyard, or place where wines or other alcoholic beverages are manufactured; prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, La Perla Vineyard Company et al., Docket 3433, January 10, 1939]

[1] 3 F. R. 648 DI.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 10th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William W. Ayres.

IN THE MATTER OF LA PERLA VINEYARD COMPANY, A CORPORATION, AND HARRY EX, AN INDIVIDUAL DOING BUSINESS AS S. GOLDENBURG & COMPANY, RAMSHEAD PRODUCTS COMPANY AND RAMSHEAD DISTILLING COMPANY, A CORPORATION, AND ALSO AS PRESIDENT OF THE LA PERLA VINEYARD COMPANY

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the record herein, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, La Perla Vineyard Company, a corporation, and Ramshead Distilling Company, a corporation, and their respective officers, and respondent Harry Ex, an individual doing business as S. Goldenburg & Company and as Ramshead Products Company or under any other names, and all of their respective agents, representatives and employees, in connection with the offering for sale, sale and distribution of wines, liquors and other alcoholic beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or through any corporate or other device or in any manner:

Representing through the use of the word "distilling", or the word "vineyard", or any other word or words of like import, in a corporate or trade name, on stationery, labels, or other advertising matter, or in any other manner (a) that they, or any of them, are distillers; or (b) that they, or any of them, manufacture the said wines or alcoholic beverages; or (c) that they, or any of them, own, operate, or control a vineyard, or place where wines or other alcoholic beverages are manufactured.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-197; Filed, January 17, 1939; 9:13 a. m.]

[1] 3 F. R. 2418 DI.

TITLE 30—MINERAL RESOURCES

NATIONAL BITUMINOUS COAL COMMISSION

[Order No. 259]

AN ORDER DIRECTING DISTRICT BOARDS FOR DISTRICTS NOS. 1, 2, 3, 4, 5, 6, 7, 8, AND 13 TO COORDINATE MINIMUM PRICES AND RULES AND REGULATIONS INCIDENT TO SALE AND DISTRIBUTION OF COAL APPROVED BY NATIONAL BITUMINOUS COAL COMMISSION TO SERVE AS BASIS FOR COORDINATION BY SAID DISTRICT BOARDS

DIRECTING SAID DISTRICT BOARDS TO SUBMIT SUCH COORDINATED PRICES AND RULES AND REGULATIONS TOGETHER WITH DATA UPON WHICH THEY ARE PREDICATED; AND ESTABLISHING AND PROMULGATING RULES AND REGULATIONS UNDER WHICH SUCH COORDINATION SHALL BE ACCOMPLISHED

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That the District Boards for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 13, shall forthwith proceed to coordinate the minimum prices and rules and regulations incident to the sale and distribution of coal, approved by the Commission to serve as a basis for coordination within and among the said districts, under authority of and in accordance with Section 4, Part II, of the Bituminous Coal Act of 1937, and the rules and regulations established and promulgated by this order. When said coordination shall have been accomplished, said District Boards shall submit said coordinated minimum prices and marketing rules and regulations to the Commission together with the data upon which they are predicated, as hereinafter provided.

2. That said District Boards shall coordinate in common consuming market areas upon a fair competitive basis said minimum prices and marketing rules and regulations. Such coordination of the minimum prices, among other factors, but without limitation, shall take into account the various kinds, qualities, and sizes of coal, and transportation charges upon coal. All minimum prices proposed for any kind, quality, or size of coal for shipment into any common consuming market area shall be just and equitable, and not unduly prejudicial or preferential, as between and among districts, shall reflect, as nearly as possible, the relative market values, at points of delivery in each common consuming market area, of the various kinds, qualities, and sizes of coal produced in the various districts, taking into account values as to uses, seasonal demand, transportation methods and charges and their effect upon a reasonable opportunity to compete on a fair basis, and the competitive relationships between coal and other forms of fuel and energy; and shall preserve as nearly as may be existing fair competitive opportunities. The minimum prices proposed as a result of such coordination shall not, as to any district, reduce or increase the return per net ton on all the coal produced therein below or above the minimum return as provided in subsection (a) of Section 4, Part II, of the Act by an amount greater than necessary to accomplish such coordination, to the end that the return per net ton upon the entire tonnage of the minimum price area shall approximate the weighted average of the total cost per net ton of the tonnage of such minimum price area.

3. That the rules and regulations incidental to the sale and distribution of coal by code members shall be so coordinated as to be reasonable and shall not be inconsistent with the requirements of the Act and shall conform to the standards of fair competition as set forth and established in Section 4, Part II, of the Bituminous Coal Act of 1937.

4. That the Commission hereby establishes and promulgates the following rules and regulations under which the minimum prices and rules and regulations incident to the sale and distribution of coal shall be coordinated:

I. Each District Board shall by appropriate resolution, designate and appoint one or more persons with power of delegation and substitution to represent the District Board in the work of coordination and fully empower such person or persons to act for the District Board in a meeting with other such representatives from the other District Boards named in this order.

II. Said representatives of the District Boards shall convene at the offices of the Commission in the City of Washington, D. C., at 10:00 o'clock A. M. on the 23rd day of January, 1939, and begin the work of coordination as ordered and directed herein. Said meeting shall continue in session daily (Sundays and holidays excepted), and shall be completed on or before 20 days from the date of convening, which period shall not be extended for any District Board or Boards except upon good cause shown.

III. The presiding officer or the secretary of the meeting shall report daily to the Commission the progress of the work. In the event the representatives of the District Boards cannot agree upon all or any part of the work of coordina-

tion, they shall certify the fact to the Commission and to the District Boards represented, together with a detailed statement covering points upon which agreements have failed.

IV. When the representatives of said District Boards shall have finished the work of coordination assigned to them, and coordination has been fully or partially accomplished by agreement, a full report thereof shall be made to the Commission and to each of the Boards represented, together with the data upon which such prices and rules and regulations are predicated.

V. On receipt of the report made as provided in paragraph IV hereof, a meeting of the respective District Boards shall be called and held and said report of the coordination provided for in Section 4, Part II, of the Act shall be fully considered by said Boards, and said report shall, by appropriate resolution of the Board, be approved and adopted, modified and adopted, or disapproved. The action of the District Boards, respectively, shall be reported to the Commission. When each of the District Boards named in this order agree and coordination is reached and accomplished, the same shall be submitted to the Commission as provided in Section 4, Part II, (b), of the Act. If coordination is not agreed upon and accomplished, and in the opinion of any one or more of said District Boards, can not be agreed upon and accomplished, said fact shall be shown by appropriate resolution of such Board or Boards and duly certified to the Commission.

VI. At said coordination meeting the representatives of the several District Boards shall determine the consuming market areas into which each District ships, and shall define the same in the most practical way by map or by geographic or territorial description in writing.

Common consuming market areas shall then be ascertained, determined and identified, on the basis of the determination made pursuant to the next succeeding section.

VII. The representatives shall then ascertain and compute the total tonnage of each District moving into each consuming market area in 1937 as taken from the Commission D–1 and D–2 reports and other competent data, broken down by use, size, and quality classifications, seasonal demand, and transportation methods. The representatives of the Boards shall determine the competing coals in each consuming market area by size, quality, use, and seasonal demand, and by transportation methods. The size groupings by quality classification, use, and seasonal demand, shall be coordinated in each consuming market.

The shipment of any size and grade of coal into a consuming market area in the calendar year 1937, as reflected in such Commission D–1 and D–2 Forms and in the other competent data shall prima facie establish that such coal is a competitive coal in such consuming market area: Provided, however, that if the District Boards shall determine that any tonnage of any size and grade of coal shipped into any consuming market area in 1937 from a particular district is of such an unsubstantial amount as to indicate that such coal is in fact not a competitive coal in said market, no proposal of a coordinated minimum price shall be made therefor for shipment into such market. Provided, further, if the District Boards shall determine from competent data with respect to tonnage distribution for any year or from any other competent data that any size and grade of coal, not reflected in the 1937 tonnage distribution, is actually competitive in a consuming market area, the Boards shall propose a coordinated minimum price for such coal and shall determine the tonnage of such coal for inclusion in the calculation of the price area return from such competent evidence as may be available.

VIII. Minimum prices reflecting destination differentials shall then be ascertained and determined on all coals competing in each consuming market area according to the standards set forth in Section 4, Part II, of the Act. The representatives of the District Boards shall thereupon determine minimum prices, free on board transportation facilities at the mines for shipment into each consuming market area for each kind, quality and size of coal competing in said area or areas in accordance with the provisions of Section 4, Part II, of the Act.

IX. When the representatives have completed their work of coordination of minimum prices in all consuming market areas and reported the same to the Commission and to the District Boards, each District Board shall immediately convene for consideration and determination, and shall determine the minimum prices for all coal free on board transportation facilities at the mine for shipment into consuming market areas, according to the provisions of Section 4, Part II, of the Act.

X. When all minimum prices have been determined as provided in Section 4, Part II, of the Act and these rules and regulations, a schedule of such prices shall be prepared by the District Boards and submitted to the Commission together with the data upon which they are predicated including a statement showing the calculated returns for the coals of the Price Area, based upon the tonnages of the several Districts, determined as in Paragraph VII herein provided. At the time of the submission of the schedule of minimum prices and the data upon which they are predicated, each District Board shall furnish a copy of the proposed price schedule to each code member within its District, and shall file with the Commission 250 copies of the proposed price schedule, and with each other District Board coordinating, 20 copies thereof. In addition thereto, each District board shall file with the Commission 50 copies of the data upon which the proposed price schedule is predicated.

XI. The District Board representatives shall also, at the meetings in Washington provided for herein, coordinate the rules and regulations for the sale and distribution of coal for code members, called Marketing Rules and Regulations, as directed in paragraph 3 hereof.

XII. When coordination of the marketing rules and regulations is accomplished, either in whole or in part, as provided in paragraph III hereof, the same shall be reported to the Commission and to the District Boards, as provided in paragraph IV hereof, and considered and acted upon by the District Boards as provided in paragraph V hereof.

XIII. When all coordinated marketing rules and regulations have been determined, a schedule of such marketing rules and regulations shall be prepared by the District Boards and a copy shall be furnished to each code member, and 250 copies thereof shall be furnished to the Commission, and 20 copies to each other District Board coordinating. In addition thereto, each District Board shall file 50 copies of the data upon which such marketing rules and regulations are predicated with the Commission.

XIV. These rules and regulations are subject to modification or amendment, or may be supplemented by further order of the Commission.

5. The Secretary of the Commission is directed to cause a copy of this order, together with the rules and regulations contained therein, to be published forthwith in the FEDERAL REGISTER, and shall cause copies hereof to be mailed to each code member within the named districts, to the Consumers' Counsel, and to the Secretary of each District Board, and shall cause copies hereof to be made available for inspection by interested parties in each of the Statistical Bureaus of the Commission.

By order of the Commission.

Dated this 16th day of January 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

[F. R. Doc. 39–200; Filed, January 17, 1939; 10:55 a. m.]

[Order No. 260]

AN ORDER AMENDING ORDER RELATING TO COORDINATION OF MINIMUM PRICES AND RULES AND REGULATIONS INCIDENTAL TO SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS BY DISTRICT BOARDS FOR DISTRICTS NOS. 14, 15, 16, 17, 18, 19, 20, 22 AND 23

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other pur-

poses" (Public No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That Section 1 of Order No. 255[1] be and the same is hereby amended to read as follows:

"1. That Paragraph VII of Section 4 of Order No. 253, as supplemented by Order No. 254, and as incorporated in Order No. 256,[2] be and the same is hereby amended to read as follows:

" 'VII. The representatives shall then ascertain and compute the total tonnage of each District moving into each consuming market area in 1937 as taken from the Commission D–1 and D–2 reports and other competent data, broken down by use, size, and quality classifications, seasonal demand, and transportation methods. The representatives of the Boards shall determine the competing coals in each consuming market area by size, quality, use, and seasonal demand, and by transportation methods. The size groupings by quality classification, use, and seasonal demand, shall be coordinated in each consuming market.

" 'The shipment of any size and grade of coal into a consuming market area in the calendar year 1937, as reflected in such Commission D–1 and D–2 Forms and in the other competent data shall prima facie establish that such coal is a competitive coal in such consuming market area: *Provided, however,* That if the District Boards shall determine that any tonnage of any size and grade of coal shipped into any consuming market area in 1937 from a particular district is of such an unsubstantial amount as to indicate that such coal is in fact not a competitive coal in said market, no proposal of a coordinated minimum price shall be made therefor for shipment into such market: *Provided, further,* If the District Boards shall determine from competent data with respect to tonnage distribution for any year or from any other competent data that any size and grade of coal, not reflected in the 1937 tonnage distribution, is actually competitive in a consuming market area, the Boards shall propose a coordinated minimum price for such coal and shall determine the tonnage of such coal for inclusion in the calculation of the price area return from such competent evidence as may be available.' "

2. The Secretary of the Commission is hereby directed to cause a copy of this Order to be published forthwith in the FEDERAL REGISTER, and shall cause copies hereof to be mailed to each code member within the Districts named in the title of this Order, to the Consumers' Counsel, and to the Secretary of each District Board, and shall cause copies hereof to be made available for inspection by interested parties at the office of the Commission, Washington, D. C., and in each of the Statistical Bureaus of the Commission.

By order of the Commission.

Dated this 16th day of January 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

[F. R. Doc. 39–201; Filed, January 17, 1939; 10:55 a. m.]

[1] 3 F. R. 3127 DI.
[2] 3 F. R. 2998, 3059, 3128 DI.

TITLE 31—MONEY AND FINANCE: TREASURY

OFFICE OF THE SECRETARY

NEWLY-MINED DOMESTIC SILVER REGULATIONS

JANUARY 16, 1939.

ARTICLE I. GENERAL PROVISIONS

SECTION 1. *Scope.*—These regulations relate to the receipt and coinage by the United States coinage mints of silver, mined in the United States or any place subject to the jurisdiction thereof, pursuant to the proclamation of December 21, 1933, as modified by the proclamations of August 9, 1934, April 10 and April 24, 1935, December 30, 1937, and December 31, 1938.[1]

SEC. 2. *Authority for regulations.*—These regulations are prescribed under authority of subsection (b) (2), section 43, title III of the act of Congress approved May 12, 1933 (Public, No. 10), as amended, and the President's proclamation of December 21, 1933, as modified by the proclamations of August 9, 1934, April 10 and April 24, 1935, December 30, 1937, and December 31, 1938.

SEC. 3. *Revocation of the Newly-Mined Domestic-Silver Regulations of January 10, 1938.*—The Newly-Mined Domestic Silver Regulations of January 10, 1938,[2] relating to the receipt and coinage of silver, mined in the United States or any place subject to the jurisdiction thereof, pursuant to the President's proclamation of December 21, 1933, as modified, are revoked. The revocation of such regulations shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil or criminal cause prior to this revocation, and all liabilities under said regulations, the Silver Regulations of December 30, 1933, relating to the receipt and coinage of silver, the Newly-Mined Domestic Silver Regulations of April 16, 1935, and the Newly-Mined Domestic Silver Regulations of May 15, 1935, shall continue and may be enforced as if said revocation had not been made.

SEC. 4. *Definitions.*—As used in these regulations—

The term "person" means an individual, partnership, association, or corporation.

The term "United States coinage mints" means the following mints: United States Mint, Philadelphia, Pa.; United States Mint, San Francisco, Calif.; United States Mint, Denver, Colo. And whenever authority is conferred in these regulations upon a "mint" such authority is conferred upon the person locally in charge of the mint, acting in accordance with instructions of the Director of the Mint or the Secretary of the Treasury.

SEC. 5. *Forms.*—Any form, the use of which is prescribed in these regulations, may be obtained at any United States mint or assay office or at the Treasury Department, Washington, D. C.

SEC. 6. *Revocation or modification.*—The provisions of these regulations may be revoked or modified at any time.

ARTICLE II. CONDITIONS UNDER WHICH SILVER WILL BE RECEIVED BY COINAGE MINTS

SEC. 20. *Silver which will be received.*—The United States coinage mints under the conditions hereinafter specified and subject to the appropriate regulations governing the mints, will receive silver which any such mint is satisfied has been mined subsequent to December 21, 1933, from natural deposits in the United States or any place subject to the jurisdiction thereof.

Such mints will also receive silver which forms a part of a mixture of domestic, secondary, and/or foreign silver provided such mints are satisfied that the aggregate amount of such mixture so received does not exceed the amount of such mixture which has been mined subsequent to December 21, 1933, from natural deposits in the United States or any place subject to the jurisdiction thereof, and, provided further, that such mints are satisfied—

(*a*) That the aggregate amount of such mixture so received pursuant to the proclamation of April 10, 1935, modifying the proclamation of December 21, 1933, as modified, does not exceed the amount of such silver which has been mined on or after April 10, 1935, from natural deposits in the United States or any place subject to the jurisdiction thereof;

(*b*) That the aggregate amount of such mixture so received pursuant to the proclamation of April 24, 1935, modifying the proclamation of December 21, 1933, as modified, does not exceed the amount of such silver which has been mined on or after April 24, 1935, from natural deposits in the United States or any place subject to the jurisdiction thereof; and

(*c*) That the aggregate amount of such mixture so received pursuant to the proclamation of December 30, 1937, or the proclamation of December 31, 1938, modifying the proclamation of December 21, 1933, as modified, does not exceed the

[1] 4 F. R. 1 DI.
[2] 3 F. R. 79 DI.

amount of such silver which has been mined on or after January 1, 1938, from natural deposits in the United States or any place subject to the jurisdiction thereof.

SEC. 21. *Affidavits.*—(*a*) Every person delivering silver mined subsequent to December 21, 1933, but prior to April 10, 1935, under the provisions of the proclamation of December 21, 1933, as modified, shall file with each such delivery a properly executed affidavit on form TS–1 and supporting affidavit or affidavits of the miner or miners on form TS–2 or TS–2A, whichever is appropriate, containing the information called for in such forms and executed under oath before an officer duly authorized to administer oaths.

(*b*) Every person delivering under such proclamation, as modified, silver which has been mined on or after April 10, 1935, but prior to April 24, 1935, shall file with each such delivery a properly executed affidavit on form TS–100 and supporting affidavit or affidavits on form TS–200 or form TS–200A, whichever is appropriate, containing the information called for in such forms and executed under oath before an officer duly authorized to administer oaths.

(*c*) Every person delivering under such proclamation, as modified, silver which has been mined on or after April 24, 1935, but prior to January 1, 1938, shall file with each such delivery a properly executed affidavit on form TS–1000 and supporting affidavit or affidavits on form TS–2000 or form TS–2000A, whichever is appropriate, containing the information called for in such forms and executed under oath before an officer duly authorized to administer oaths.

(*d*) Every person delivering under such proclamation, as modified, silver which has been mined on or after January 1, 1938, shall file with each such delivery a properly executed affidavit on form TS–11 and supporting affidavit or affidavits on form TS–12 or form TS–12A, whichever is appropriate, containing the information called for in such forms and executed under oath before an officer duly authorized to administer oaths.

SEC. 22. *Evidence which may be demanded.*—Persons delivering silver under the provisions of these regulations shall furnish such further evidence as may from time to time be requested by any United States coinage mint or the Director of the Mint, including affidavits, sworn reports, and sworn abstracts from books of account of any mines or any or all smelters or refineries handling such silver.

SEC. 23. *Settlement for silver delivered.*—(*a*) The Director of the Mint, pursuant to the voluntary consent of the depositor given in the agreement executed on form TS–1, shall, in the case of such silver mined prior to April 10, 1935, retain 50 percent as seigniorage and for services performed by the Government of the United States, and the balance of such silver so received, that is, 50 percent thereof, shall be coined into standard silver dollars and the same, or an equal number of other standard silver dollars, or, at the option of the owner or depositor of such silver, silver certificates in an amount in dollars equal to such standard silver dollars, shall be delivered to the owner or depositor of such silver. Any fractional part of one dollar due hereunder shall be returned in any legal tender coin of the United States.

(*b*) The Director of the Mint, pursuant to the voluntary consent of the depositor as given in the agreement executed on form TS–100 shall, in the case of such silver mined on or after April 10, 1935, but prior to April 24, 1935, retain, of the silver so received, 45 percent as seigniorage and for services performed by the Government of the United States, and there shall be returned in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so received (that is, $1.2929+ a fine troy ounce), less said deduction of 45 percent.

(*c*) The Director of the Mint, pursuant to the voluntary consent of the depositor as given in the agreement executed on form TS–1000 shall, in the case of such silver mined on or after April 24, 1935, but prior to January 1, 1938, retain, of the silver so received, 40 percent as seigniorage and for services performed by the Government of the United States, and there shall be returned in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so received (that is, $1.2929+ a fine troy ounce), less said deduction of 40 percent.

(*d*) The Director of the Mint, pursuant to the voluntary consent of the depositor as given in the agreement executed on form TS–11 shall, in the case of such silver mined on or after January 1, 1938, retain, of the silver so received, 50 percent as seigniorage and for services performed by the Government of the United States, and there shall be returned in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so received (that is, $1.2929+ a fine troy ounce), less said deduction of 50 percent.

SEC. 24. *Time for receipt of silver.*—Silver to be eligible for receipt pursuant to the Proclamation of December 21, 1933, as modified, and these regulations must be delivered to a United States coinage mint not later than June 30, 1939. Delivery of silver in accordance with the foregoing may be accomplished by physical delivery on or before June 30, 1939, or by the acceptance by a United States coinage mint on or before such date of a duly executed instrument of transfer on an approved form covering such silver.

ARTICLE III. RECORDS AND REPORTS

SEC. 30. *Records.*—Every person delivering silver under the proclamation of December 21, 1933, as modified, and regulations issued thereunder, and every person owning or operating a smelter or refinery at which silver to be delivered under such proclamation, as modified, and regulations issued thereunder, is mixed with secondary or foreign silver, or both, shall keep accurate records of all acquisitions, by mining or otherwise and of all dispositions of silver mined subsequent to December 21, 1933, including, among other things, records of the date when such silver was mined, acquired, and disposed of. Such records, as well as records required to be kept under the Silver Regulations of December 30, 1933, April 16, 1935, May 15, 1935, and January 10, 1938, shall be preserved for at least one year after the last delivery and made available for examination by a representative of the Director of the Mint upon the request of such representative.

SEC. 31. *Reports.*—Every person delivering or who has delivered silver under the proclamation of December 21, 1933, as modified, and regulations issued thereunder, shall file with the Director of the Mint, on or before the 25th day of each month after the date the first delivery is made, a report covering the period of the preceding calendar month, provided that the first report shall cover the period from December 21, 1933, to the end of the calendar month preceding the date of the report. Silver delivered as aforesaid prior to April 1, 1935, shall be reported on form TS–3. Silver delivered as aforesaid on or after April 1, 1935, shall be reported on form TS 300. Such reports shall be executed under oath before an officer duly authorized to administer oaths and shall contain all of the information called for in such forms.

SEC. 32. *Agreement relating to records.*—Every person delivering, under the proclamation of December 21, 1933, as modified, silver which has been mixed with secondary or foreign silver, or both, at a smelter or refinery other than that of the person making the delivery, shall, upon request by any United States coinage mint or the Director of the Mint, also file with each delivery of such silver an agreement properly executed under oath by a duly authorized officer of such other smelter or refinery, that the records will be kept as provided in this article, and that such records will be available for examination by a representative of the Director of the Mint for at least one year after the last delivery.

[SEAL] HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

Approved:

FRANKLIN D ROOSEVELT
The White House,
January 16, 1939.

[F. R. Doc. 39–194; Filed, January 16, 1939; 4:18 p. m.]

TITLE 41—PUBLIC CONTRACTS

DIVISION OF PUBLIC CONTRACTS

IN THE MATTER OF THE DETERMINATION OF THE PREVAILING MINIMUM WAGES IN THE IRON AND STEEL INDUSTRY

This matter is before me pursuant to Section 1 (b) of the Act of June 30, 1936 (49 Stat. 2036; 41 U. S. C. Sup. III 35) entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", (hereinafter called the Act). The Public Contracts Board, created in accordance with Section 4 of the said Act by Administrative Order dated October 6, 1936, held a hearing on July 25, 1938 in the above-entitled matter.

Notice of this hearing was sent to all known members of the industry, to trade unions, to trade publications, and to trade associations in the field. Invitation to attend the hearing was extended through the national press to all other interested parties.

Appearances were made at the hearing by 39 members of the industry, of whom 20 offered testimony either in person or by representatives. Appearances were also made by the Amalgamated Association of Iron, Steel & Tin Workers of America, American Federation of Labor, Bricklayers International Union, Committee for Industrial Organization, Machinery and Allied Products Institute, Steel Founders Society of America, Steel Plate Fabricators Association, and Steel Workers Organizing Committee. Testimony was given by American Federation of Labor and Steel Workers Organizing Committee.

Prior to, during and immediately after the hearing, letters, telegrams, and briefs containing wage data and other relevant information were received from 51 concerns who were not represented at the hearing. After the hearing a notice dated July 29, 1938 was sent to all known members of the industry from whom no reports were received in response to the notice of hearing informing these parties that the record would be held open until August 8, 1938 for the submission of wage data and other information with respect to the prevailing minimum wages in the Iron and Steel Industry. Responses in the form of letters, telegrams and briefs were received from 61 of these parties. At the request of interested parties the time for filing briefs was extended until August 22, 1938.

The Board's report recommended that the industry be defined as in Article I, sections 3 and 4 of the Amendment to Code of Fair Competition for the Iron and Steel Industry, with the exception that it recommended the exclusion of tin plate, tin mill black plate, and terneplate for the reason that the government makes no purchases thereof and there is evidence of a wage scale existing in the production of these products different from that otherwise existing in the Iron and Steel Industry.

The Board further recommended that the Secretary of Labor find the minimum wage in the Iron and Steel Industry to be 45 cents an hour within the area made up of the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, and Virginia; and 62.5 cents an hour within the area made up of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, West Virginia, Kentucky, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia.

The Board further recommended that a study be made looking to the establishment of a minimum wage for the manufacture of tin plate, tin mill black plate, and terneplate, and that after the determination of a minimum wage in the industry, further study be made to determine the effect of the determination on small companies. The Board likewise recommended that an allowance be made in the determination of this case for the employment of apprentices at wages less than the prevailing minimum wages, provided that the employer has on file an active indenture entered into in accordance with the standards of the Federal Committee on Apprenticeship.

The Administrator of Public Contracts circularized the Board's recommendations to all parties who had shown an interest in the matter in order that they might register their objections to or approval of them before any decision was made by the Secretary.

Numerous requests were received from members of the industry for an opportunity to present oral argument for or against the adoption of the Board's recommendations in whole or in part. Such objections as were made to the Board's report were not to the finding as to the wages actually being paid in the industry, but to the recommendation based on these wage facts that the prevailing minimum wage be found to be 45 cents in the South and 62.5 cents in the North. For these reasons, on December 20, 1938, opportunity was afforded to all interested parties to present oral arguments before me as Assistant Secretary of Labor acting for and in the stead of the Secretary. Forty-eight companies and two representatives of labor unions availed themselves of this opportunity to show cause.

As in the case of letters and briefs, the oral arguments did not challenge the Board's findings of wage facts, but made objection to the conclusions based thereon as to the prevailing minimum wages in the industry.

No objection has been made to the definition of the industry recommended by the Board, with the exception that the Machinery and Allied Products Institute requested that the definition be so worded as to exclude from its purview the open hearth and electric furnaces used in that industry. The definition as formulated describes the products of the Iron and Steel Industry and the provisions thereof do not apply to open hearth and electric furnaces which are utilized in any production other than that specifically enumerated. All of the objections which have been taken to the recommendations of the Board turn upon the construction to be placed upon the language of Section 1 (b) of the Public Contracts Act.

It has been urged that the recommendations of the Board are contrary to the provisions of the Public Contracts Act because they do not take cognizance of existing wage differentials between the various municipalities in which the plants of the industry are located. It is also urged that the Board's recommendations fail to give proper recognition to the existing economic structure of the industry and have failed to recognize the existence of broad geographic differentials. It has also been objected that differentials based on population should be recognized in the selection of the appropriate locality within which prevailing minimum wages are to be determined; and that differentials based upon the size of the plants should be recognized.

It is recognized that the problem of selecting the geographical boundaries of each "locality" within which prevailing minimum wages are to be determined by the Secretary of Labor is a difficult one upon which wide differences of opinion may reasonably be held.

On behalf of one group of objectors it has been urged that the term "locality" as used in the Act is in effect synonymous with "city, town, village or other civil subdivision of the state". In support of this contention, it is urged that the Act is but an extension of the principles of the Davis-Bacon law (Act of Aug. 30, 1935, 49 Stat. 1011); that since the unit within which prevailing minimum wages are to be determined under the Davis-Bacon law, is the city, town, village or other civil subdivision of the state in which the work is to be performed, Congress must have intended the same unit to be used for the determinations to be made under the Act.

While this position has been forcefully presented it is believed that it will not stand careful analysis. In the first place, in accordance with well-known canons of statutory construction, it may be assumed that had Congress intended to so limit the unit for prevailing minimum wage determinations under the Act, it would have adopted the identical language of the Davis-Bacon law.

The Davis-Bacon law provides:

> That the advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works * * * and which requires or involves the

employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the *city, town, village, or other civil subdivision of the state* in which the work is to be performed, * * * and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications * * * [Italics supplied.]

The comparable language of the Act provides:

That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States * * * for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations: * * *

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating *in the locality* in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract; [Italic supplied.]

It will be seen that the language of the Act closely corresponds to the language of the Davis-Bacon law in certain respects. But in selecting the appropriate unit for the making of prevailing minimum wage determinations, Congress carefully avoided the use of the more narrowly restrictive language of "city, town, village or other civil subdivision of the state in which the work is to be performed" and adopted instead the more flexible word "locality." This significant departure from the language of the Davis-Bacon law in this particular respect indicates a Congressional intent to relax the rigid requirement of the Davis-Bacon law and to permit the Secretary to exercise a sound discretion in the selection of appropriate units for prevailing minimum wage determinations. Indeed, had Congress used in the Act the restrictive language which was entirely appropriate for the different type of problem dealt with by the Davis-Bacon law, it would in a large measure have defeated the very objectives which it sought to achieve.

The restricted unit of the "city, town, village or other civil subdivision of the state in which the work is to be performed" is appropriate in the case of construction contracts for government buildings or public works since the construction work must be performed at the site of construction. But such is not ordinarily the case with government supply contracts. Here the field is broad and suppliers widely separated geographically may and normally are in a position to and do compete for government supply contracts. The Iron and Steel Industry itself is a striking example. And, since in many instances, there will be found to be but one plant of a particular industry located in any one city, town, village or other civil subdivision, the net effect of construing the word "locality" as used in the Act to mean "city, town, village or other civil subdivision" would be to predestine in most cases a finding that the prevailing minimum wages are the minimum wages in fact being paid at each plant.

Furthermore, such an arbitrary and unwarranted construction of the language of the Act would produce administrative problems of an almost insuperable character. Under such a construction it would be necessary to make prevailing minimum wage findings for perhaps as many different municipalities as there are establishments of manufacturers or suppliers who might conceivably bid on each government supply contract. And this procedure would be required for every one of the many government supply contracts to be entered into. Effective administration of the Act would become almost impossible. In view of the fact that the Act sought to eliminate the competitive advantage enjoyed by bidders on government supply contracts as a result of subnormal wage practices, no argument is necessary to demonstrate that such a narrowly restrictive construction of the statutory language would operate to make the statute an empty gesture and the finding of prevailing minimum wages a wholly useless procedure.

It will also be observed that this narrowly restricted construction of the word "locality" as used in the Act is contrary to the administrative construction consistently adhered to by the Secretary of Labor in the administration of the Act. Reference to the determinations heretofore made in the administration of the Act will disclose a consistent approach to the problem of selection of appropriate units for prevailing minimum wage determinations in the light of the facts of each particular industry. In no instance has the language been administratively construed to require differentials between each city, town, village, or other civil subdivision of a state. In several instances where the facts in respect of the particular industry indicated that regional influences were in fact present, regional groupings were made and prevailing minimum wages determined for each region. Although it has had opportunity to do so, Congress has not acted to alter this consistent administrative construction of the Act. Congress may be presumed to have acquiesced and agreed to this administrative construction by its failure to act to alter it.

If we adopt in the present case this customary approach it is important to examine the concept which industry has of itself. It is a matter of public knowledge that an industry so vastly ramified in its productive and marketing operations as iron and steel does not regard itself as subdivided in a multiplicity of small localities, but as concentrated around a few well defined centers. For example, Mr. Myron Taylor in his report to the Annual Meeting of stockholders of the United States Steel Corporation on April 4, 1938, emphasized this when he said, Page 11: "It was determined, after a great deal of study, that the Corporation could achieve its highest efficiency by grouping its main producing units in the Pittsburgh district, the Chicago district and the Birmingham district. The Corporation had no adequate access to the Pacific Coast and so in 1930 the assets of the Columbia Steel Corporation were acquired for common stock, thus giving the Corporation a producing unit in every major market."

Other objections were based upon the failure of the Board to give consideration to differences in population and differences in the size of the various plants in selecting each locality. But these objections likewise appear to be without merit since the Act makes no provision for the establishment of population differentials or differentials according to size of plant.

The word "locality" used in the statute carries obvious geographic connotations. But, as has been pointed out in some of the briefs, the term may indicate "2. The fact of being local in the sense of belonging to a particular spot", or "4 (b). A place or district of undefined extent considered as the site occupied by certain persons or things, or as the scene of certain activities". (A New English Dictionary on Historical Principles; Oxford, Clarendon Press, 1908; Vol. VI, p. 380.)

The language of the statute does not itself suggest answers to the questions which it raises. Other factors than geography must be adduced to assist the determination. Undoubtedly the Board was correct in considering the economic facts of the industry itself to assist it to a conclusion. The only question is whether the Board gave proper weight to the geographic factor and to other relevant considerations. In the light of all the evidence, I am disposed to the view that the recommendations of the Board should not be adopted in full because for the present purposes those recommendations do not give sufficient weight to some of the relevant factors, and consequently fail to recognize the existence of all localities indicated by the evidence in the record.

The Board has recommended a finding that the states of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia and Vir-

ginia constitute a locality within the meaning of the Act and that the prevailing minimum wage in such locality is 45 cents an hour. On the whole, this recommendation appears to be amply supported by the evidence in the record. This southern area historically constitutes a well-defined geographical area and the pattern of currently prevailing wages in this area, as shown by the evidence in the record, supports the conclusion that the entire group of southern states should be treated as one locality for the purposes of the present proceeding. However, it would appear that the State of West Virginia, except for the panhandle area, comprising the counties of Harrison, Hancock, Brooke, Ohio, Monongalia, and Marshall, should likewise be included within the locality of the other southern states. The State of West Virginia, except for the panhandle area, is closely allied with the South and there seems no reason for excluding it from the southern locality. The evidence indicates that the only production in the State of West Virginia outside the panhandle area is predominantly for the southern market where its competition lies and this area is understood to be outside the Pittsburgh market area. With the addition of that portion of the State of West Virginia, exclusive of the counties of Hancock, Brooke, Ohio, Harrison, Monongalia, and Marshall, the recommendations of the Board with respect to the southern locality and the recommendation of a finding that a prevailing minimum wage in that locality is 45 cents an hour will be adopted.

The recommendations of the Board that the remaining states of the country should be found to constitute one locality for the purposes of the present determination do not, in my opinion, properly recognize certain geographic and economic factors in the industry as fully as they should.

The coastal states of Washington, Oregon and California seem to constitute a fairly well-defined geographical locality. The evidence reveals that the principal producing centers are found in the State of California where there are shown to be nine plants. There is one small plant in Oregon and three plants in Washington, one of which is not in operation. The geographic position of these states more or less isolates them from competition by land from the East, and the plants in these states compete for and serve a more or less well-defined local market.

There is wage data of record for five plants in California and one in Washington. Plants not reporting have a small production capacity. The minimum wage in three plants, employing 3,130 employees, is 60 cents per hour. The minimum wage in one plant, employing 90 employees, is 65 cents per hour, and the minimum wage in two plants, employing 1,495 employees, is 58 cents per hour.

The more or less well-defined wage pattern disclosed by the data in the record supports the conclusion that geographically and economically these three states should be found to constitute a locality for the purposes of the present determination and that the prevailing minimum wage in the locality is 60 cents per hour.

Proceeding eastward geographic considerations suggest the inclusion of the mountain states of Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado, and Arizona within a single locality. There are only two producing plants in this area, and the principal plant enjoys a certain economic isolation by virtue of the fact that no water transportation is available. This plant, located approximately 1,000 miles west of Chicago, is shown to sell approximately three-quarters of its output within a radius of 600 miles.

Both of the plants located within this locality pay a minimum wage of 60 cents per hour. Again a combination of economic and geographic considerations leads to the conclusion that the above-named states may properly be regarded as a separate locality for the present purposes and that the prevailing minimum wage of the locality is 60 cents.

The remaining states east of the mountain states and west of the Mississippi River, consisting of the states of North Dakota, South Dakota, Kansas, Nebraska, Minnesota, Iowa and Missouri have producing centers in Minnesota, Iowa, and Missouri. There are two plants in Minnesota, one small plant in Iowa and a concentration of seven plants in Missouri. There are three additional plants in Alton, Madison, and Granite City, Illinois which are separated from Saint Louis, Missouri by the Mississippi River and for all practical purposes are a part of the Saint Louis producing center. It is characteristic of most of the producing points in this group of states that they are midway between the great producing centers in the North and the East and the great producing center of the South in Birmingham. Historically the plants in this area have operated on a wage differential below the rate paid in the northern and eastern centers, but higher than the rates paid in the South. The record contains wage data for six of the ten plants included in these states, including all of the principal producing centers. The minimum wages being paid in and about Saint Louis, Missouri vary from 55 cents per hour to 58½ cents per hour. Two thousand eighty nine employees are employed in one plant paying a minimum of 58½ cents per hour, while 825 are employed in two plants paying a minimum of 56½ cents per hour and 2,160 employees are employed in two plants paying a minimum of 55 cents per hour. The record indicates that one plant in Minnesota employs 1,303 employees and pays a minimum wage of 60 cents per hour. The composite wage pattern for this area clearly discloses a differential under the northern and eastern plants and above the southern plants.

In view of all the factors involved, it is my opinion that the states under discussion, together with Alton, Madison, and Granite City, Illinois should be found to constitute a locality within the meaning of the Act, and upon the basis of the wage data just discussed, a finding of a prevailing minimum wage of 58½ cents per hour will be made.

The area immediately to the east of the trans-Mississippi locality is dominated by the producing centers in and about Chicago and Gary, Indiana. The states of Wisconsin, Illinois (except Alton, Madison and Granite City which are a part of the Saint Louis industrial area) Michigan, and Indiana seem to constitute a fairly well-defined locality, both in terms of geography and in the light of the concentration of production.

The record contains wage data from 31 plants of the 82 in the locality. Twelve plants employing 47,545 employees pay a minimum of 62½ cents; 13 plants employing 5,647 employees pay a minimum of from 38 to 62½ cents; 3 plants employing 5,376 employees pay a minimum of from 63 to 70 cents. The prevailing minimum wage in this locality is obviously 62½ cents an hour.

The remaining states consisting of Pennsylvania, Delaware, Maryland, Kentucky, Ohio, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine, together with the panhandle area of West Virginia, consisting of the counties of Hancock, Brooke, Ohio, Harrison, Monongalia and Marshall, fall within the great market dominated by Pittsburgh. It has been urged both at the hearing before the Board and in the subsequent proceedings in this matter that the western portion of the state of Pennsylvania does not fall within the same locality as the eastern portion of the state and a finding of various different localities has been urged. Yet the entire eastern market, frequently referred to in the industry as the Pittsburgh district, would seem to constitute a single locality, both in terms of geography and in terms of the markets predominantly served by the producing plants.

Historically, the plants in the eastern states have sold their products largely on the so-called Pittsburgh basing point system. While counsel commented on the recent abandonment of the system, none of the evidence in the record would indicate that the comparatively recent change has as yet had any significant economic repercussions or has in any way altered the essential outlines of the Pittsburgh locality.

The record contains wage data with respect to 157 of the 268 plants in the area. The reporting plants employ 220,653 employees. Eighty-six of the plants, employing 154,707 employees, pay a min-

imum of 62½ cents an hour. The first point of substantial concentration of employees is at 56½ cents. At that rate there are 16 plants employing 36,743 employees. Thirty-eight plants employing 12,029 employees pay less than 56 cents. Between the rates of 56½ and 62½ cents, there are 16 mills employing 16,673 employees. One plant employing 501 employees pays 63½ cents. Clearly the minimum is 62½ cents.

It has been urged at the hearing that in some instances the establishment of a 62½ cent wage will operate inequitably as to those plants which are now paying less, particularly with relation to those plants in the Pittsburgh locality which are paying 56½ cents, and it has also been urged that a further study of the industry be made before the wage determination be promulgated. The evidence as recited above, however, for each district, indicates clearly the prevalence of the prevailing minimum wage in that area and is sufficient basis upon which to promulgate a wage generally applicable throughout the industry.

It was argued by counsel that if the regional lines which the majority of the Board recommended were adopted or if lines were established other than by municipal subdivision as contemplated in the Davis-Bacon law, hardship would be created upon some of the small companies in some regions. It was also suggested, although the point was not developed in the evidence, that while the small companies depend upon government business only to a minor degree certain kinds of steel specialties essential to the Government are chiefly furnished by small companies. If this is indeed the case an analysis will be made of the bidding in future contracts for specialties so that the machinery provided by Section 6 may be called into operation upon a proper showing that the public interest would thereby be served.

There was also a suggestion that the small companies perform the bulk of work on experimental contracts. Since experimental contracts are not within the scope of this decision, it would appear that the procurement of commodities obtained in this way will not be impaired.

It is noted that there exists in the industry a practice whereby the employees of the industry pay, through the instrumentality of the employer's disbursing office, certain obligations. It is suggested that the practice exists for the convenience of the employee in paying the obligations. Whether or not such practice contravenes the provisions of Section 1 (b) of the Act is a matter of course that can be decided only upon full disclosure of all facts involved.

Where there exists at the plant of any bidder on Government contracts subject to the provisions of the Public Contracts Act a practice of so using its disbursing office for the convenience of its employees, and where this practice has been in existence at the plant for a long continued period of time, the bidder should submit a full statement of the facts to the Administrator of the Division of Public Contracts for a determination as to whether or not they contravene provisions of Section 1 (b) of the Act.

Upon all the evidence submitted in this matter, including the briefs filed and the oral arguments,

I hereby determine—

(1) That the iron and steel industry is defined to mean and include the business of producing and selling all or any one or more of the following products:

Axles—rolled or forged.
Bale ties—single loop.
Bars—alloy steel, hot rolled.
Bars—cold finished, carbon and alloy.
Bars—concrete reinforcing, straight lengths.
Bars, ingots, blooms and billets—iron.
Bars—merchant steel.
Bars—tool steel.
Ferro-manganese and speigeleisen.
Girder rails and splice bars therefor.
Ingots, blooms, billets and slabs—alloy.
Ingots, blooms, billets and slabs—carbon.
Light rails—60 pounds or less per yard—and splice bars and angle bars therefor.
Standard tee rails of more than 60 pounds per yard—and angle bars and rail joints therefor, or any of such products.
Mechanical tubing.
Pig iron—foundry, high silicon silvery, malleable, open hearth basic, Bessemer and high silicon Bessemer.
Pig iron—low phosphorus.
Pipe—standard, line pipe and oil country tubular products.
Plates.
Posts—fence and sign.
Railroad tie plates.
Railroad track spikes.
Sheet bars.
Sheets.
Skelp.
Steel sheet piling.
Strip steel—cold rolled.
Strip steel—hot rolled.
Structural shapes.
Tubes—boiler.
Tube rounds.
Wheels—car, rolled steel.
Wire—drawn.
Wire hoops—twisted or welded.
Wire nails and staples, twisted barbless wire, barbed wire, twisted wire fence stays and wire fencing (except chain-link fencing).
Wire rods.
Wire—spring.
Wire—telephone.

(2) That the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the Iron and Steel Industry are the amounts indicated for each of the following localities whether arrived at on a time or piece work basis:

1. 45 cents per hour in the locality consisting of the states of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, Virginia and West Virginia (except the counties of Hancock, Brooke, Ohio, Harrison, Monongalia, and Marshall);

2. 60 cents per hour in the locality consisting of the states of Washington, Oregon and California;

3. 60 cents per hour in the locality consisting of the states of Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado and Arizona;

4. 58½ cents per hour in the locality consisting of the states of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri and the area in and about East Saint Louis, Illinois;

5. 62½ cents per hour in the locality consisting of the States of Wisconsin, Illinois, (except the area in and about East Saint Louis, Illinois), Michigan, and Indiana;

6. 62½ cents per hour in the locality consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia;

Provided, That apprentices may be employed at lower rates if their employment conforms to the standards of the Federal Committee on Apprenticeship.

This determination shall be effective and the minimum wages hereby established for the respective localities shall apply to all contracts awarded subject to Public Act No. 846, 74th Congress, on or after January 31, 1939.

C. V. McLAUGHLIN,
Acting Secretary.

Dated this 16th day of January, 1939.

[F. R. Doc. 39-206; Filed, January 17, 1939; 12:55 p. m.]

TITLE 43—PUBLIC LANDS

OFFICE OF SECRETARY OF INTERIOR, DIVISION OF GRAZING

NEVADA GRAZING DISTRICT NO. 4

MODIFICATION

JANUARY 10, 1939.

Under and pursuant to the provisions of the act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976), and subject to the limitations and conditions therein contained, the Departmental order of November 3, 1936,[1] establishing Nevada Grazing District No. 4, is hereby modified

[1] 1 F. R. 1748.

to include within its exterior boundaries the following-described land:

NEVADA

Mount Diablo Meridian

T. 5 N., R. 67 E.,
secs. 1 to 3, 10 to 15, 22 to 27, and 34 to 36, inclusive;
T. 6 N., R. 67 E.,
secs. 1 to 3, 10 to 15, 22 to 27, and 34 to 36, inclusive;
T. 7 N., R. 67 E.,
secs. 22 to 27, and 34 to 36, inclusive (unsurveyed);
T. 3 N., R. 68 E.,
secs. 1 to 3, 10 to 15, 22 to 27, and 34 to 36, inclusive;
Tps. 4 to 6 N., R. 68 E., all;
T. 7 N., R. 68 E.,
secs. 19 to 22, and 27 to 34, inclusive (unsurveyed);
T. 1 N. R. 69 E.,
secs. 1 to 5, 8 to 17, 20 to 29, and 32 to 36, inclusive;
Tps. 2 to 6 N., R. 69 E., all;
Tps. 1 to 6 N., Rs. 70 and 71 E., all (partly surveyed);
T. 1 S., R. 69 E.,
secs. 1 to 4, 9 to 16, 21 to 28, N½ sec. 32, secs. 33 to 36, inclusive;
T. 2 S., R. 69 E.,
sec. 1, N½ sec. 2, N½ sec. 3, sec. 4;
T. 1 S., Rs. 70 and 71 E., all (partly surveyed).

The Federal Range Code, revised to August 31, 1938, shall be effective as to the land embraced within this addition from and after the date of the publication of this order in the FEDERAL REGISTER.

HARRY SLATTERY,
Acting Secretary.

[F. R. Doc. 39–198; Filed, January 17, 1939; 10:14 a. m.]

GENERAL LAND OFFICE

STOCK DRIVEWAY WITHDRAWALS NOS. 16 AND 238 REDUCED; STOCK DRIVEWAY WITHDRAWAL NO. 214 REVOKED

OREGON

JANUARY 6, 1939.

Departmental orders of April 24, 1918, April 16, 1930, August 9, 1933, and January 19, 1937, establishing and modifying Stock Driveways Nos. 16, 214 and 238 under section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), are hereby revoked in so far as they affect the following-described lands:

WILLAMETTE MERIDIAN

T. 9 S., R. 14 E.,
sec. 1, lots 3 and 4, S½NW¼,
sec. 2, lots 1, 2, 3, 4, and SE¼NE¼,
sec. 3, lots 1, 2, 3, SW¼NE¼, S½NW¼, N½SW¼ and NW¼SE¼,
sec. 4, S½NE¼, lot 4, SW¼NW¼, N½SW¼, SE¼SW¼ and SE¼,
sec. 5, lot 1;
T. 8 S., R. 15 E.,
sec. 31, E½NE¼ and S½,
sec. 32, N½,
sec. 33, N½NE¼ and NW¼;
T. 5 S., R. 18 E.,
sec. 26, W½W½,
sec. 27, SE¼NE¼ and E½SE¼,
sec. 34, E½E½,
sec. 35, W½W½;
T. 13 S., R. 25 E.,
sec. 12, N½N½, SW¼NW¼ and W½SW¼,
sec. 13, W½W½ and SE¼SW¼,
sec. 14, SE¼NE¼ and E½SE¼,
sec. 23, E½NE¼,
sec. 24, W½W½;
T. 19 S., R. 31 E.,
sec. 24, N½;
T. 19 S., R. 32 E.,
sec. 18, SW¼SE¼,
sec. 19, NE¼, lot 1, and E½SE¼,
secs. 20, 21 and 22, S½;
aggregating 5,192.82 acres.

HARRY SLATTERY,
Under Secretary.

[F. R. Doc. 39–199; Filed, January 17, 1939; 10:14 a. m.]

Notices

TREASURY DEPARTMENT.

Bureau of Customs.

[T. D. 49779]

CALEXICO MUNICIPAL AIRPORT, CALEXICO, CALIFORNIA, REDESIGNATED AS AN AIRPORT OF ENTRY FOR A PERIOD OF ONE YEAR

JANUARY 10, 1939.

To Collectors of Customs and Others Concerned:

Under the authority of section 7 (b) of the Air Commerce Act of 1926 (U. S. C., title 49, sec. 177 (b)), the Calexico Municipal Airport, Calexico, California, is hereby redesignated [1] as an airport of entry for civil aircraft and merchandise carried thereon arriving from places outside the United States, as defined in section 9 (b) of the said act (U. S. C., title 49, sec. 179 (b)), for a period of one year from January 10, 1939.

[SEAL] WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

[F. R. Doc. 39–204; Filed, January 17, 1939; 11:04 a. m.

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 14th day of January, A. D. 1939.

[File No. 58–2]

IN THE MATTER OF PENNSYLVANIA INVESTING CORPORATION

ORDER APPROVING SALE OF BONDS, ETC.

Pennsylvania Investing Corporation, an indirect subsidiary of Associated Gas and Electric Company, having filed an application pursuant to section 12 (f) of the Public Utility Holding Company Act of 1935, and Rule U–12F–1, promulgated thereunder, seeking the approval of the sale by it of First and Refunding Mortgage 5% Bonds of Kentucky Tennessee Light and Power Company to the issuer in the principal amount of $1,477,900 at a price of $1,252,000; said application also seeking the approval of the sale of additional First and Refunding Mortgage 5% Bonds of Kentucky Tennessee Light and Power Company in an amount sufficient to exhaust funds, stated to be in the approximate amount of $12,000, yet to be realized from an adjustment in the selling price of certain physical properties of Kentucky Tennessee Light and Power Company; said application further seeking the approval of the sale of additional First and Refunding Mortgage 5% Bonds of Kentucky Tennessee Light and Power Company whenever in the future funds shall be available from the sale of physical properties of Kentucky Tennessee Light and Power Company with which to acquire said bonds; and

A public hearing having been held after appropriate notice; [1] the applicant having waived a trial examiner's report, submission by him of proposed findings of fact to the Commission, submission to him of requested findings of fact by counsel to the Commission, the filing of briefs with the Commission and oral argument before the Commission; and the record in this matter having been examined and the Commission having made and filed its findings herein;

It is ordered, That the sale of said bonds in the principal amount of $1,477,900 be and the same hereby is approved, subject, however, to the following conditions:

(1) That the sale of said bonds shall be in compliance with the terms and conditions of and for the purposes represented by said application as amended;

(2) That within ten days after the sale of said bonds the applicant shall file with this Commission a certificate of notification showing that such sale has been made in accordance with the terms and conditions and for the purposes represented by said amended application;

(3) That within ten days after the sale of the bonds used to exhaust the additional funds yet to be realized from an adjustment in the selling price of the physical properties of Kentucky which selling price was $1,252,000 (the fund at present available) plus additions and betterments from December 31, 1937 to December 15, 1938 at cost, the applicant shall file a certificate of notification, showing that such sale has been effected in accordance with the same terms and conditions as the bonds in the principal amount of $1,477,900;

It is further ordered, That the applicant's request that this application serve as an approval of all future sales by it of First and Refunding Mortgage 5% Bonds of Kentucky Tennessee Light and Power Company to the issuer whenever the issuer has proceeds derived from the sale of its physical assets available for such purchase, be and the same hereby is denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–205; Filed, January 17, 1939; 11:07 a. m.]

[1] 3 F. R. 100 DI.

[1] 3 F. R. 3160 DI.